

AMENDED IN ASSEMBLY APRIL 9, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2471

Introduced by Assembly Member Robert Pacheco

February 21, 2002

~~An act to amend Section 2025 of the Code of Civil Procedure, relating to depositions. An act to amend Section 1871.4 of the Insurance Code, relating to insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2471, as amended, Robert Pacheco. ~~Depositions: stenographic recording.~~ *Insurance: false and fraudulent claims.*

Existing law provides that it is unlawful to commit certain acts of insurance fraud, and to knowingly assist, abet, solicit, or conspire with any person to commit certain violations. Among other things, it is unlawful to knowingly present a false or fraudulent claim for the payment of a loss under an insurance policy. A violation of these provisions is a crime punishable by both a fine up to \$50,000 or imprisonment in a county jail for 1 year or state prison for 2, 3, or 5 years, or both a fine and imprisonment.

This bill would also provide that a violation of these provisions while under oath is punishable by both a fine up to \$50,000 or imprisonment in a state prison for 2, 3, or 5 years, or both, thereby imposing a state-mandated local program by providing a new enhancement.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law regulates the stenographic recording of depositions, as specified.~~

~~This bill would make a technical, nonsubstantive change in that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 2025 of the Code of Civil Procedure is~~
2 *SECTION 1. Section 1871.4 of the Insurance Code is*
3 *amended to read:*

4 1871.4. (a) It is unlawful to do any of the following:

5 (1) Make or cause to be made any knowingly false or fraudulent
6 material statement or material representation for the purpose of
7 obtaining or denying any compensation, as defined in Section
8 3207 of the Labor Code.

9 (2) Present or cause to be presented any knowingly false or
10 fraudulent written or oral material statement in support of, or in
11 opposition to, any claim for compensation for the purpose of
12 obtaining or denying any compensation, as defined in Section
13 3207 of the Labor Code.

14 (3) Knowingly assist, abet, conspire with, or solicit any person
15 in an unlawful act under this section.

16 (4) Make or cause to be made any knowingly false or fraudulent
17 statements with regard to entitlement to benefits with the intent to
18 discourage an injured worker from claiming benefits or pursuing
19 a claim.

20 For the purposes of this subdivision, “statement” includes, but
21 is not limited to, any notice, proof of injury, bill for services,
22 payment for services, hospital or doctor records, X-ray, test
23 results, medical-legal expense as defined in Section 4620 of the
24 Labor Code, other evidence of loss, injury, or expense, or payment.

25 (b) (1) Every person who violates subdivision (a) shall be
26 punished by imprisonment in county jail for one year, or in the
27 state prison, for two, three, or five years, or by a fine not exceeding
28 fifty thousand dollars (\$50,000) or double the value of the fraud,
29 whichever is greater, or by both imprisonment and fine.

(2) Every person who violates subdivision (a) while under oath shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(c) Any person who violates subdivision (a) and who has a prior felony conviction of that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b).

The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any transaction.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~amended to read:~~

~~2025.—(a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.~~

~~(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:~~

~~(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.~~

~~(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.~~

~~(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.~~

~~Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (c) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.~~

~~(d) The deposition notice shall state all of the following:~~

~~(1) The address where the deposition will be taken.~~

~~(2) The date of the deposition, selected under subdivision (f), and the time it will commence.~~

~~(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.~~

~~(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.~~

~~(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the~~

1 stenographic method as required by paragraph (1) of subdivision
2 ~~(1) and any intention to record the testimony by stenographic~~
3 ~~method, through the instant visual display of the testimony. In the~~
4 ~~latter event, a copy of the deposition notice shall also be given to~~
5 ~~the deposition officer. Any offer to provide the instant visual~~
6 ~~display of the testimony or to provide rough draft transcripts to any~~
7 ~~party which is accepted prior to, or offered at, the deposition shall~~
8 ~~also be made by the deposition officer at the deposition to all~~
9 ~~parties in attendance.~~

10 (6) Any intention to reserve the right to use at trial a videotape
11 deposition of a treating or consulting physician or of any expert
12 witness under paragraph (4) of subdivision (u). In this event, the
13 operator of the videotape camera shall be a person who is
14 authorized to administer an oath, and shall not be financially
15 interested in the action or be a relative or employee of any attorney
16 of any of the parties.

17 If the deponent named is not a natural person, the deposition
18 notice shall describe with reasonable particularity the matters on
19 which examination is requested. In that event, the deponent shall
20 designate and produce at the deposition those of its officers,
21 directors, managing agents, employees, or agents who are most
22 qualified to testify on its behalf as to those matters to the extent of
23 any information known or reasonably available to the deponent.
24 A deposition subpoena shall advise a nonparty deponent of its duty
25 to make this designation, and shall describe with reasonable
26 particularity the matters on which examination is requested.

27 If the attendance of the deponent is to be compelled by service
28 of a deposition subpoena under Section 2020, an identical copy of
29 that subpoena shall be served with the deposition notice.

30 (e) (1) The deposition of a natural person, whether or not a
31 party to the action, shall be taken at a place that is, at the option of
32 the party giving notice of the deposition, either within 75 miles of
33 the deponent's residence, or within the county where the action is
34 pending and within 150 miles of the deponent's residence, unless
35 the court orders otherwise under paragraph (3).

36 (2) The deposition of an organization that is a party to the action
37 shall be taken at a place that is, at the option of the party giving
38 notice of the deposition, either within 75 miles of the
39 organization's principal executive or business office in California,
40 or within the county where the action is pending and within 150

1 miles of that office. The deposition of any other organization shall
2 be taken within 75 miles of the organization's principal executive
3 or business office in California, unless the organization consents
4 to a more distant place. If the organization has not designated a
5 principal executive or business office in California, the deposition
6 shall be taken at a place that is, at the option of the party giving
7 notice of the deposition, either within the county where the action
8 is pending, or within 75 miles of any executive or business office
9 in California of the organization.

10 (3) A party desiring to take the deposition of a natural person
11 who is a party to the action or an officer, director, managing agent,
12 or employee of a party may make a motion for an order that the
13 deponent attend for deposition at a place that is more distant than
14 that permitted under paragraph (1). This motion shall be
15 accompanied by a declaration stating facts showing a reasonable
16 and good faith attempt at an informal resolution of any issue
17 presented by the motion.

18 In exercising its discretion to grant or deny this motion, the court
19 shall take into consideration any factor tending to show whether
20 the interests of justice will be served by requiring the deponent's
21 attendance at that more distant place, including, but not limited to,
22 the following:

23 (A) Whether the moving party selected the forum.

24 (B) Whether the deponent will be present to testify at the trial
25 of the action.

26 (C) The convenience of the deponent.

27 (D) The feasibility of conducting the deposition by written
28 questions under Section 2028, or of using a discovery method
29 other than a deposition.

30 (E) The number of depositions sought to be taken at a place
31 more distant than that permitted under paragraph (1).

32 (F) The expense to the parties of requiring the deposition to be
33 taken within the distance permitted under paragraph (1).

34 (G) The whereabouts of the deponent at the time for which the
35 deposition is scheduled.

36 The order may be conditioned on the advancement by the
37 moving party of the reasonable expenses and costs to the deponent
38 for travel to the place of deposition.

39 The court shall impose a monetary sanction under Section 2023
40 against any party, person, or attorney who unsuccessfully makes

1 or opposes a motion to increase travel limits for party deponent,
2 unless it finds that the one subject to the sanction acted with
3 substantial justification or that other circumstances make the
4 imposition of the sanction unjust.

5 (f) ~~An oral deposition shall be scheduled for a date at least 10~~
6 ~~days after service of the deposition notice. If, as defined in~~
7 ~~subdivision (a) of Section 1985.3, the party giving notice of the~~
8 ~~deposition is a subpoenaing party, and the deponent is a witness~~
9 ~~commanded by a deposition subpoena to produce personal records~~
10 ~~of a consumer, the deposition shall be scheduled for a date at least~~
11 ~~20 days after issuance of that subpoena. However, in unlawful~~
12 ~~detainer actions, an oral deposition shall be scheduled for a date at~~
13 ~~least five days after service of the deposition notice, but not later~~
14 ~~than five days before trial.~~

15 ~~On motion or ex parte application of any party or deponent, for~~
16 ~~good cause shown, the court may shorten or extend the time for~~
17 ~~scheduling a deposition, or may stay its taking until the~~
18 ~~determination of a motion for a protective order under subdivision~~
19 ~~(i).~~

20 (g) ~~Any party served with a deposition notice that does not~~
21 ~~comply with subdivisions (b) to (f), inclusive, waives any error or~~
22 ~~irregularity unless that party promptly serves a written objection~~
23 ~~specifying that error or irregularity at least three calendar days~~
24 ~~prior to the date for which the deposition is scheduled, on the party~~
25 ~~seeking to take the deposition and any other attorney or party on~~
26 ~~whom the deposition notice was served. If an objection is made~~
27 ~~three calendar days before the deposition date, the objecting party~~
28 ~~shall make personal service of that objection pursuant to Section~~
29 ~~1011 on the party who gave notice of the deposition. Any~~
30 ~~deposition taken after the service of a written objection shall not~~
31 ~~be used against the objecting party under subdivision (u) if the~~
32 ~~party did not attend the deposition and if the court determines that~~
33 ~~the objection was a valid one.~~

34 ~~In addition to serving this written objection, a party may also~~
35 ~~move for an order staying the taking of the deposition and~~
36 ~~quashing the deposition notice. This motion shall be accompanied~~
37 ~~by a declaration stating facts showing a reasonable and good faith~~
38 ~~attempt at an informal resolution of any issue presented by the~~
39 ~~motion. The taking of the deposition is stayed pending the~~
40 ~~determination of this motion.~~

1 The court shall impose a monetary sanction under Section 2023
2 against any party, person, or attorney who unsuccessfully makes
3 or opposes a motion to quash a deposition notice, unless it finds
4 that the one subject to the sanction acted with substantial
5 justification or that other circumstances make the imposition of the
6 sanction unjust.

7 (h) (1) The service of a deposition notice under subdivision (e)
8 is effective to require any deponent who is a party to the action or
9 an officer, director, managing agent, or employee of a party to
10 attend and to testify, as well as to produce any document or
11 tangible thing for inspection and copying.

12 (2) The attendance and testimony of any other deponent, as
13 well as the production by the deponent of any document or tangible
14 thing for inspection and copying, requires the service on the
15 deponent of a deposition subpoena under Section 2020.

16 (3) A person may take, and any person other than the deponent
17 may attend, a deposition by telephone or other remote electronic
18 means. The court may expressly provide that a nonparty deponent
19 may appear at his or her deposition by telephone if it finds there
20 is good cause and no prejudice to any party. A party deponent must
21 appear at his or her deposition in person and be in the presence of
22 the deposition officer. The procedures to implement this section
23 shall be established by court order in the specific action proceeding
24 or by the California Rules of Court.

25 (i) Before, during, or after a deposition, any party, any
26 deponent, or any other affected natural person or organization may
27 promptly move for a protective order. The motion shall be
28 accompanied by a declaration stating facts showing a reasonable
29 and good faith attempt at an informal resolution of each issue
30 presented by the motion.

31 The court, for good cause shown, may make any order that
32 justice requires to protect any party, deponent, or other natural
33 person or organization from unwarranted annoyance,
34 embarrassment, or oppression, or undue burden and expense. This
35 protective order may include, but is not limited to, one or more of
36 the following directions:

37 (1) That the deposition not be taken at all.

38 (2) That the deposition be taken at a different time.

39 (3) That a videotape deposition of a treating or consulting
40 physician or of any expert witness, intended for possible use at trial

1 ~~under paragraph (4) of subdivision (u), be postponed until the~~
2 ~~moving party has had an adequate opportunity to prepare, by~~
3 ~~discovery deposition of the deponent, or other means, for~~
4 ~~cross examination.~~

5 ~~(4) That the deposition be taken at a place other than that~~
6 ~~specified in the deposition notice, if it is within a distance~~
7 ~~permitted by subdivision (e).~~

8 ~~(5) That the deposition be taken only on certain specified terms~~
9 ~~and conditions.~~

10 ~~(6) That the deponent's testimony be taken by written, instead~~
11 ~~of oral, examination.~~

12 ~~(7) That the method of discovery be interrogatories to a party~~
13 ~~instead of an oral deposition.~~

14 ~~(8) That the testimony be recorded in a manner different from~~
15 ~~that specified in the deposition notice.~~

16 ~~(9) That certain matters not be inquired into.~~

17 ~~(10) That the scope of the examination be limited to certain~~
18 ~~matters.~~

19 ~~(11) That all or certain of the writings or tangible things~~
20 ~~designated in the deposition notice not be produced, inspected, or~~
21 ~~copied.~~

22 ~~(12) That designated persons, other than the parties to the~~
23 ~~action and their officers and counsel, be excluded from attending~~
24 ~~the deposition.~~

25 ~~(13) That a trade secret or other confidential research,~~
26 ~~development, or commercial information not be disclosed or be~~
27 ~~disclosed only to specified persons or only in a specified way.~~

28 ~~(14) That the parties simultaneously file specified documents~~
29 ~~enclosed in sealed envelopes to be opened as directed by the court.~~

30 ~~(15) That the deposition be sealed and thereafter opened only~~
31 ~~on order of the court.~~

32 ~~If the motion for a protective order is denied in whole or in part,~~
33 ~~the court may order that the deponent provide or permit the~~
34 ~~discovery against which protection was sought on those terms and~~
35 ~~conditions that are just.~~

36 ~~The court shall impose a monetary sanction under Section 2023~~
37 ~~against any party, person, or attorney who unsuccessfully makes~~
38 ~~or opposes a motion for a protective order, unless it finds that the~~
39 ~~one subject to the sanction acted with substantial justification or~~

~~that other circumstances make the imposition of the sanction unjust.~~

~~(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.~~

~~(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.~~

~~If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.~~

~~(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a~~

1 ~~declaration stating that the petitioner has contacted the deponent~~
2 ~~to inquire about the nonappearance. If this motion is granted, the~~
3 ~~court shall also impose a monetary sanction under Section 2023~~
4 ~~against the deponent or the party with whom the deponent is~~
5 ~~affiliated, unless it finds that the one subject to the sanction acted~~
6 ~~with substantial justification or that other circumstances make the~~
7 ~~imposition of the sanction unjust. On motion of any other party~~
8 ~~who, in person or by attorney, attended at the time and place~~
9 ~~specified in the deposition notice in the expectation that the~~
10 ~~deponent's testimony would be taken, the court shall also impose~~
11 ~~a monetary sanction under Section 2023, unless it finds that the one~~
12 ~~subject to the sanction acted with substantial justification or that~~
13 ~~other circumstances make the imposition of the sanction unjust.~~

14 ~~If that party or party-affiliated deponent then fails to obey an~~
15 ~~order compelling attendance, testimony, and production, the court~~
16 ~~may make those orders that are just, including the imposition of an~~
17 ~~issue sanction, an evidence sanction, or a terminating sanction~~
18 ~~under Section 2023 against that party deponent or against the party~~
19 ~~with whom the deponent is affiliated. In lieu of, or in addition to,~~
20 ~~this sanction, the court may impose a monetary sanction under~~
21 ~~Section 2023 against that deponent or against the party with whom~~
22 ~~that party deponent is affiliated, and in favor of any party who, in~~
23 ~~person or by attorney, attended in the expectation that the~~
24 ~~deponent's testimony would be taken pursuant to that order.~~

25 ~~(k) Except as provided in paragraph (3) of subdivision (d) of~~
26 ~~Section 2020, the deposition shall be conducted under the~~
27 ~~supervision of an officer who is authorized to administer an oath~~
28 ~~and is subject to all of the following requirements:~~

29 ~~(1) The officer shall not be financially interested in the action~~
30 ~~and shall not be a relative or employee of any attorney of the~~
31 ~~parties, or of any of the parties.~~

32 ~~(2) Services and products offered or provided by the deposition~~
33 ~~officer or the entity providing the services of the deposition officer~~
34 ~~to any party or to any party's attorney or third party who is~~
35 ~~financing all or part of the action shall be offered to all parties or~~
36 ~~their attorneys attending the deposition. No service or product may~~
37 ~~be offered or provided by the deposition officer or by the entity~~
38 ~~providing the services of the deposition officer to any party or any~~
39 ~~party's attorney or third party who is financing all or part of the~~
40 ~~action unless the service or product is offered or provided to all~~

1 parties or their attorneys attending the deposition. All services and
2 products offered or provided shall be made available at the same
3 time to all parties or their attorneys.

4 (3) The deposition officer or the entity providing the services
5 of the deposition officer shall not provide to any party or any
6 party's attorney or third party who is financing all or part of the
7 action any service or product consisting of the deposition officer's
8 notations or comments regarding the demeanor of any witness,
9 attorney, or party present at the deposition. The deposition officer
10 or entity providing the services of the deposition officer shall not
11 collect any personal identifying information about the witness as
12 a service or product to be provided to any party or third party who
13 is financing all or part of the action.

14 (4) Upon the request of any party or any party's attorney
15 attending a deposition, any party or any party's attorney attending
16 the deposition shall enter in the record of the deposition all services
17 and products made available to that party or party's attorney or
18 third party who is financing all or part of the action by the
19 deposition officer or by the entity providing the services of the
20 deposition officer. A party in the action who is not represented by
21 an attorney shall be informed by the noticing party or the party's
22 attorney that the unrepresented party may request this statement.

23 (5) Any objection to the qualifications of the deposition officer
24 shall be waived unless made before the deposition begins or as
25 soon thereafter as the ground for that objection becomes known or
26 could be discovered by reasonable diligence.

27 *(1) (1) The deposition officer shall put the deponent under*
28 *oath. Unless the parties agree or the court orders otherwise, the*
29 *testimony, as well as any stated objections, shall be taken*
30 *stenographically. The party noticing the deposition may also*
31 *record the testimony by audiotape or videotape if the notice of*
32 *deposition stated an intention also to record the testimony by either*
33 *of those methods, or if all the parties agree that the testimony may*
34 *also be recorded by either of those methods. Any other party, at that*
35 *party's expense, may make a simultaneous audiotape or videotape*
36 *record of the deposition, provided that other party promptly, and*
37 *in no event less than three calendar days before the date for which*
38 *the deposition is scheduled, serves a written notice of this intention*
39 *to audiotape or videotape the deposition testimony on the party or*
40 *attorney who noticed the deposition, on all other parties or*

~~attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.~~

~~(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:~~

~~(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.~~

~~(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions. Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered or provided to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys. The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any other person or entity any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or the entity providing the services of the deposition officer shall not collect~~

1 any personal identifying information about the witness as a service
2 or product to be provided to any party or third party who is
3 financing all or part of the action. Upon the request of any party
4 or any party's attorney attending a deposition, any party or any
5 party's attorney attending the deposition shall enter in the record
6 of the deposition all services and products made available to that
7 party or party's attorney or third party who is financing all or part
8 of the action by the deposition officer or by the entity providing the
9 services of the deposition officer. A party in the action who is not
10 represented by an attorney shall be informed by the noticing party
11 that the unrepresented party may request this statement.

12 (C) The operator shall not distort the appearance or the
13 demeanor of participants in the deposition by the use of camera or
14 sound recording techniques.

15 (D) The deposition shall begin with an oral or written statement
16 on camera or on the audiotape that includes the operator's name
17 and business address, the name and business address of the
18 operator's employer, the date, time, and place of the deposition,
19 the caption of the case, the name of the deponent, a specification
20 of the party on whose behalf the deposition is being taken, and any
21 stipulations by the parties.

22 (E) Counsel for the parties shall identify themselves on camera
23 or on the audiotape.

24 (F) The oath shall be administered to the deponent on camera
25 or on the audiotape.

26 (G) If the length of a deposition requires the use of more than
27 one unit of tape, the end of each unit and the beginning of each
28 succeeding unit shall be announced on camera or on the audiotape.

29 (H) At the conclusion of a deposition, a statement shall be made
30 on camera or on the audiotape that the deposition is ended and shall
31 set forth any stipulations made by counsel concerning the custody
32 of the audiotape or videotape recording and the exhibits, or
33 concerning other pertinent matters.

34 (I) A party intending to offer an audiotaped or videotaped
35 recording of a deposition in evidence under subdivision (u) shall
36 notify the court and all parties in writing of that intent and of the
37 parts of the deposition to be offered within sufficient time for
38 objections to be made and ruled on by the judge to whom the case
39 is assigned for trial or hearing, and for any editing of the tape.
40 Objections to all or part of the deposition shall be made in writing.

1 The court may permit further designations of testimony and
2 objections as justice may require. With respect to those portions of
3 an audiotaped or videotaped deposition that are not designated by
4 any party or that are ruled to be objectionable, the court may order
5 that the party offering the recording of the deposition at the trial
6 or hearing suppress those portions, or that an edited version of the
7 deposition tape be prepared for use at the trial or hearing. The
8 original audiotape or videotape of the deposition shall be
9 preserved unaltered. If no stenographic record of the deposition
10 testimony has previously been made, the party offering a
11 videotape or an audiotape recording of that testimony under
12 subdivision (u) shall accompany that offer with a stenographic
13 transcript prepared from that recording.

14 (3) In lieu of participating in the oral examination, parties may
15 transmit written questions in a sealed envelope to the party taking
16 the deposition for delivery to the deposition officer, who shall
17 unseal the envelope and propound them to the deponent after the
18 oral examination has been completed.

19 (m) (1) The protection of information from discovery on the
20 ground that it is privileged or that it is a protected work product
21 under Section 2018 is waived unless a specific objection to its
22 disclosure is timely made during the deposition.

23 (2) Errors and irregularities of any kind occurring at the oral
24 examination that might be cured if promptly presented are waived
25 unless a specific objection to them is timely made during the
26 deposition. These errors and irregularities include, but are not
27 limited to, those relating to the manner of taking the deposition, to
28 the oath or affirmation administered, to the conduct of a party,
29 attorney, deponent, or deposition officer, or to the form of any
30 question or answer. Unless the objecting party demands that the
31 taking of the deposition be suspended to permit a motion for a
32 protective order under subdivision (n), the deposition shall
33 proceed subject to the objection.

34 (3) Objections to the competency of the deponent, or to the
35 relevancy, materiality, or admissibility at trial of the testimony or
36 of the materials produced are unnecessary and are not waived by
37 failure to make them before or during the deposition.

38 (4) If a deponent fails to answer any question or to produce any
39 document or tangible thing under the deponent's control that is
40 specified in the deposition notice or a deposition subpoena, the

~~party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).~~

~~(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.~~

~~The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.~~

~~(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a~~

1 ~~certified copy of any parts of the stenographic transcript of the~~
2 ~~deposition that are relevant to the motion. If a deposition is~~
3 ~~recorded by audiotape or videotape, the moving party is required~~
4 ~~to lodge a certified copy of a transcript of any parts of the~~
5 ~~deposition that are relevant to the motion. If the court determines~~
6 ~~that the answer or production sought is subject to discovery, it shall~~
7 ~~order that the answer be given or the production be made on the~~
8 ~~resumption of the deposition.~~

9 The court shall impose a monetary sanction under Section 2023
10 against any party, person, or attorney who unsuccessfully makes
11 or opposes a motion to compel answer or production, unless it
12 finds that the one subject to the sanction acted with substantial
13 justification or that other circumstances make the imposition of the
14 sanction unjust.

15 If a deponent fails to obey an order entered under this
16 subdivision, the failure may be considered a contempt of court. In
17 addition, if the disobedient deponent is a party to the action or an
18 officer, director, managing agent, or employee of a party, the court
19 may make those orders that are just against the disobedient party,
20 or against the party with whom the disobedient deponent is
21 affiliated, including the imposition of an issue sanction, an
22 evidence sanction, or a terminating sanction under Section 2023.
23 In lieu of, or in addition to, this sanction, the court may impose a
24 monetary sanction under Section 2023 against that party deponent
25 or against any party with whom the deponent is affiliated.

26 (p) ~~Unless the parties agree otherwise, the testimony at any~~
27 ~~deposition recorded by stenographic means shall be transcribed.~~
28 ~~The party noticing the deposition shall bear the cost of that~~
29 ~~transcription, unless the court, on motion and for good cause~~
30 ~~shown, orders that the cost be borne or shared by another party.~~
31 ~~Notwithstanding paragraph (2) of subdivision (k), any other party,~~
32 ~~at that party's expense, may obtain a copy of the transcript. If the~~
33 ~~deposition officer receives a request from a party for an original~~
34 ~~or a copy of the deposition transcript, or any portion thereof, and~~
35 ~~the document will be available to that party prior to the time the~~
36 ~~original or copy would be available to any other party, the~~
37 ~~deposition officer shall immediately notify all other parties~~
38 ~~attending the deposition of the request, and shall, upon request by~~
39 ~~any party other than the party making the original request, make~~
40 ~~that copy of the full or partial deposition transcript available to all~~

~~parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.~~

~~If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.~~

~~(q) (1) If deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.~~

~~Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may~~

1 shorten the 30-day period for making changes, approving, or
2 refusing to approve the transcript.

3 The deposition officer shall indicate on the original of the
4 transcript, if the deponent has not already done so at the office of
5 the deposition officer, any action taken by the deponent and
6 indicate on the original of the transcript, the deponent's approval
7 of, or failure or refusal to approve, the transcript. The deposition
8 officer shall also notify in writing the parties attending the
9 deposition of any changes which the deponent timely made in
10 person. If the deponent fails or refuses to approve the transcript
11 within the allotted period, the deposition shall be given the same
12 effect as though it had been approved, subject to any changes
13 timely made by the deponent. However, on a seasonable motion
14 to suppress the deposition, accompanied by a declaration stating
15 facts showing a reasonable and good faith attempt at an informal
16 resolution of each issue presented by the motion, the court may
17 determine that the reasons given for the failure or refusal to
18 approve the transcript require rejection of the deposition in whole
19 or in part.

20 The court shall impose a monetary sanction under Section 2023
21 against any party, person, or attorney who unsuccessfully makes
22 or opposes a motion to suppress a deposition, unless it finds that
23 the one subject to the sanction acted with substantial justification
24 or that other circumstances make the imposition of the sanction
25 unjust.

26 (2) If there is no stenographic transcription of the deposition,
27 the deposition officer shall send written notice to the deponent and
28 to all parties attending the deposition that the recording is available
29 for review, unless the deponent and all these parties agree on the
30 record to waive the hearing or viewing of an audiotape or
31 videotape recording of the testimony. For 30 days following this
32 notice the deponent, either in person or by signed letter to the
33 deposition officer, may change the substance of the answer to any
34 question.

35 The deposition officer shall set forth in a writing to accompany
36 the recording any changes made by the deponent, as well as either
37 the deponent's signature identifying the deposition as his or her
38 own, or a statement of the deponent's failure to supply the
39 signature, or to contact the officer within the allotted period. When
40 a deponent fails to contact the officer within the allotted period, or

1 expressly refuses by a signature to identify the deposition as his or
2 her own, the deposition shall be given the same effect as though
3 signed. However, on a reasonable motion to suppress the
4 deposition, accompanied by a declaration stating facts showing a
5 reasonable and good faith attempt at an informal resolution of each
6 issue presented by the motion, the court may determine that the
7 reasons given for the refusal to sign require rejection of the
8 deposition in whole or in part.

9 The court shall impose a monetary sanction under Section 2023
10 against any party, person, or attorney who unsuccessfully makes
11 or opposes a motion to suppress a deposition, unless it finds that
12 the one subject to the sanction acted with substantial justification
13 or that other circumstances make the imposition of the sanction
14 unjust.

15 (r) (1) The deposition officer shall certify on the transcript of
16 the deposition, or in a writing accompanying an audiotaped or
17 videotaped deposition as described in paragraph (2) of subdivision
18 (q), that the deponent was duly sworn and that the transcript or
19 recording is a true record of the testimony given.

20 (2) When prepared as a rough draft transcript, the transcript of
21 the deposition may not be certified and may not be used, cited, or
22 transcribed as the certified transcript of the deposition
23 proceedings. The rough draft transcript may not be cited or used
24 in any way or at any time to rebut or contradict the certified
25 transcript of deposition proceedings as provided by the deposition
26 officer.

27 (s) (1) The certified transcript of a deposition shall not be filed
28 with the court. Instead, the deposition officer shall securely seal
29 that transcript in an envelope or package endorsed with the title of
30 the action and marked: "Deposition of (here insert name of
31 deponent)," and shall promptly transmit it to the attorney for the
32 party who noticed the deposition. This attorney shall store it under
33 conditions that will protect it against loss, destruction, or
34 tampering.

35 The attorney to whom the transcript of a deposition is
36 transmitted shall retain custody of it until six months after final
37 disposition of the action. At that time, the transcript may be
38 destroyed, unless the court, on motion of any party and for good
39 cause shown, orders that the transcript be preserved for a longer
40 period.

~~(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (1), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.~~

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

~~(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2), pursuant to a court order under Section 485.230, for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.~~

~~(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:~~

~~(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.~~

~~(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.~~

~~(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:~~

~~(A) The deponent resides more than 150 miles from the place of the trial or other hearing.~~

~~(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.~~

~~(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.~~

~~(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the~~

1 ~~deponent is available to testify if the deposition notice under~~
2 ~~subdivision (d) reserved the right to use the deposition at trial, and~~
3 ~~if that party has complied with subparagraph (I) of paragraph (2)~~
4 ~~of subdivision (I).~~

5 ~~(5) Subject to the requirements of this section, a party may offer~~
6 ~~in evidence all or any part of a deposition, and if the party~~
7 ~~introduces only part of the deposition, any other party may~~
8 ~~introduce any other parts that are relevant to the parts introduced.~~

9 ~~(6) Substitution of parties does not affect the right to use~~
10 ~~depositions previously taken.~~

11 ~~(7) When an action has been brought in any court of the United~~
12 ~~States or of any state, and another action involving the same~~
13 ~~subject matter is subsequently brought between the same parties~~
14 ~~or their representatives or successors in interest, all depositions~~
15 ~~lawfully taken and duly filed in the initial action may be used in~~
16 ~~the subsequent action as if originally taken in that subsequent~~
17 ~~action. A deposition previously taken may also be used as~~
18 ~~permitted by the Evidence Code.~~

19 ~~(v) Violation of subdivision (k) by any person may result in a~~
20 ~~civil penalty of up to five thousand dollars (\$5,000) imposed by a~~
21 ~~court of competent jurisdiction.~~

